

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JAVIER CESARIO and  
FERNANDO MARTINEZ,

Plaintiffs,

v.  
BNI CONSTRUCTION, INC.,  
MIKIAL ABDUR RAHIM and  
MUSA LAST NAME UNKNOWN,

Defendants.

Case No. 07 Civ. 8545 (LLS)

DECLARATION OF  
KERIN E. COUGHLIN  
IN SUPPORT OF  
REQUEST TO ENTER  
DEFAULT OF DEFENDANTS

I, Kerin E. Coughlin, hereby declare pursuant to 28 U.S.C. § 1746:

1. I am an attorney with Constantine Cannon LLP, counsel for the plaintiffs in the above-captioned matter. I make this declaration in support of plaintiffs' request that the Clerk of this Court enter on the docket the default of defendants BNI Construction, Inc. ("BNI"), Mikial Abdur-Rahim and Musa Last Name Unknown (collectively, "Defendants") filed herewith. The facts stated in this declaration are based on my personal knowledge, or, where noted, on information that I have received in connection with this case.

2. On or about October 2, 2007, I provided the Summons and Complaint in this matter to Jeremy Murphy, a paralegal at my firm. Mr. Murphy properly served the Summons and Complaint on defendants Mikial Abdur-Rahim and Musa Last Name Unknown under the provisions of Federal Rule of Civil Procedure 4(e)(1) and certified as such to this Court in proofs of service dated October 31, 2007 and January 2, 2008 and filed with this Court on January 3, 2008. True and correct copies of those proofs of service are attached to this Declaration as Exhibits A and B.

3. On or about October 24, 2007, Mr. Murphy provided copies of the Summons and Complaint in this matter to Brittany Vogel, an employee of Hinman Straub PC in Albany, New York. Ms. Vogel properly served the Summons and Complaint on defendant BNI under the provisions of Federal Rule of Civil Procedure 4(e)(1) via the New York State Secretary of State. Ms. Vogel certified as such to this Court in a proof of service dated October 26, 2007 and duly filed with this Court on November 9, 2007. A true and correct copy of that proof of service is attached to this declaration as Exhibit C.

4. Defendants have failed to serve or file an answer, or to respond otherwise, to the Summons and Complaint.

5. Under Federal Rule of Civil Procedure 12(a)(1)(A), Defendants' time limits for responding to the Summons and Complaint have now expired, and have not been extended by stipulation of the parties or Order of the Court.

6. Upon information and belief, defendants Mikial Abdur-Rahim and Musa Last Name Unknown are neither infants nor incompetent people; rather, they are adults and appear to be capable of managing their own affairs. Further, upon information and belief, said defendants are not in the military service.

7. Defendant BNI could not be an infant or an incompetent person within the meaning of Rule 55(a) of the Federal Rules of Civil Procedure, nor could it be in the military service. This is because BNI is a corporation organized and existing under the laws of the State of New York, with its principal place of business in New York, New York.

Under penalty of perjury, the foregoing is true and correct.

Dated: February 7, 2008



Kerin E. Coughlin

## **EXHIBIT A**

Case 1:07-cv-08545-LLS Document 6 Filed 11/02/2007 Page 1 of 2

SAO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

Southern

District of

New York

Javier Cesario and  
Fernando Martinez

v.

BNI Construction, Inc.,  
Mikial Abdur-Rahim and  
Musa Last Name Unknown

SUMMONS IN A CIVIL ACTION

CASE NUMBER:

**07 CIV 8545**  
**JUDGE STANTON**

TO: (Name and address of Defendant)

Mikial Abdur-Rahim  
13 Mevan Avenue  
Englewood, New Jersey 07631

OR

Mikial Abdur-Rahim  
BNI Construction, Inc.  
300 West 147th St., Suite 1C  
New York, New York 10039

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)  
Kerin E. Coughlin, Esq.  
Constantine Cannon LLP  
450 Lexington Avenue, 17th Fl.  
New York, New York 10017

Elena Goldstein, Esq.  
New York Legal Assistance Group  
450 West 33rd Street, 11th Fl.  
New York, New York 10001

an answer to the complaint which is served on you with this summons, within twenty (20) days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

10/2/2007

CLERK

DATE

(By) DEPUTY CLERK

Case 1:07-cv-08545-LLS Document 6 Filed 11/02/2007 Page 2 of 2

AO140 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE		
Service of the summons and complaint was made by me:	DATE: 10/31/2007	
NAME OF SERVER (PRINT) Jeremy Murphy	TYPE: Paralegal	
<i>(Check one box below to indicate appropriate method of service)</i>		
<input checked="" type="checkbox"/> Served personally upon the defendant. Place where served: <b>BNI Construction, LLC, 300 West 147th Street, Suite 1C, New York, New York 10039</b>		
<input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.		
Name of person with whom the summons and complaint were left:		
<input type="checkbox"/> Returned unexecuted.		
<input type="checkbox"/> Other (specify):		
STATEMENT OF SERVICE FEES		
TRAVEL	STAMPS	TOTAL \$0.00
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on 10/31/2007 at 10:00 AM              Server: Jeremy Murphy, Cannon LLC            550 Lexington Avenue, 17th Fl.            New York, New York 10017    <i>10/31/07</i> </p>		
<small>(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.</small>		

## **EXHIBIT B**

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

Southern

District of

New York

Javier Cesario and  
Fernando Martinez

SUMMONS IN A CIVIL ACTION

v.

BNI Construction, Inc.,  
Mikial Abdur-Rahim and  
Musa Last Name Unknown

CASE NUMBER:

07 CIV 8545

JUDGE STANTON

TO: (Name and address of Defendant)

Musa Last Name Unknown  
c/o BNI Construction, Inc.  
300 West 147th Street, Suite 1C  
New York, New York 10039

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)  
Kerin E. Coughlin, Esq. Elena Goldstein, Esq.  
Constantine Cannon LLP New York Legal Assistance Group  
450 Lexington Avenue, 17th Fl. 450 West 33rd Street, 11th Fl.  
New York, New York 10017 New York, New York 10001

an answer to the complaint which is served on you with this summons, within twenty (20) days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

CLERK

10/2/2007

DATE

(By) DEPUTY CLERK

*Javier Cesario*

(AO 440 (Rev. 8/01) Summons in a Civil Action)

RETURN OF SERVICE		
Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE	12/28/2007
NAME OF SERVER (PRINT) Jeremy Murphy	TITLE	Paralegal
<i>Check one box below to indicate appropriate method of service</i>		
<input type="checkbox"/> Served personally upon the defendant. Place where served:  <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left:  <input type="checkbox"/> Returned unexecuted: Affixed an envelope containing copies of the Summons and complaint to the door of the defendant's place of business, and mailed a second envelope also containing copies of the Summons and complaint by first class mail to the defendant at his place of business, as set forth in the attached Affidavit of Service and pursuant to N.Y.C.P.L.R. Sec. 308(4).		
STATEMENT OF SERVICE FEES		
TRAVEL \$4.00	SERVICES	TOTAL \$4.00
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.		
Executed on <u>12/31/2007</u> Date	<u>Signature of Server</u> Constantine Cannon LLP 450 Lexington Avenue, Fl. 17 New York, NY 10017 <u>Address of Server</u>	

<sup>(1)</sup> As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Javier Cesario and  
Fernando Martinez,

Case No. 07 Civ. 8545 (LLS)

Plaintiffs,

AFFIDAVIT OF SERVICE

-against-

BNI Construction, Inc.,  
Mikial Abdur-Rahim and  
Musa Last Name Unknown,

Defendants.

State of New York )  
                      )  
County of New York ) ss:

JEREMY MURPHY, being duly sworn, hereby deposes and says as follows:

1. I am employed as a paralegal at Constantine Cannon LLP, counsel for plaintiffs in the above-captioned matter. I am familiar with the proceedings in this case and have personal knowledge of the facts set forth herein.
2. On or about October 5, 2007, I contacted Howard Goldman, Esq. of Demovsky Lawyer Service ("DLS"), a process serving company, by telephone. The purpose of my call was to hire DLS to serve copies of the Summons and Complaint on the defendants in this matter, BNI Construction, Inc. ("BNI"), Mikial Abdur-Rahim ("Mikial") and Musa Last Name Unknown ("Musa"). As to defendant Musa, I instructed Mr. Goldman to attempt service at BNI's office, 300 West 147th Street, Suite 1C, New York, New York 10039, because it was (and is) my understanding that BNI is Musa's actual place of business. See Dkt. No. 1 ¶ 7.
3. DLS attempted to serve copies of the Summons and Complaint on defendants on seven (7) occasions, each on a different date and at a different time. Attached hereto as Exhibits A and B are true and correct copies of Affidavits of Attempted Service by DLS that describe those seven (7) occasions. As the Affidavits reflect, on none of those seven (7) occasions was DLS successful. See Exs. A, B.
4. On October 30, 2007 at approximately 2:10 p.m., I attempted to serve copies of the Summons and Complaint on defendants Musa and Mikial at BNI's office. While I

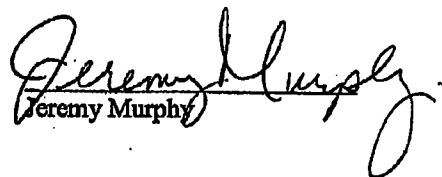
was there, defendant Mikial verbally confirmed in response to my inquiries that that location was in fact BNI's office and that he was in fact Mikial. I served copies of the Summons and Complaint on Mikial personally by placing the documents in his hand. *See* Dkt. No. 6. I asked Mikial if Musa was on the premises at that time, and Mikial responded that he "never see[s] him [Musa]." I understood Mikial's statement to indicate that he does in fact know Musa, but that he just does not often see Musa at BNI's office. I asked Mikial if Musa would be in the office later that day or in the near future, and, contrary to Mikial's earlier statement indicating that he does in fact know Musa, Mikial responded that he did not know Musa. Mikial refused to accept service of the Summons and Complaint on Musa's behalf.

5. On or about November 4, 2007, I attempted to determine Musa's residential address by using the New York City Department of Finance Automated City Register Information System ("ACRIS"), which can be accessed on the New York City Department of Finance's Internet website. Users of ACRIS can obtain information regarding real property in the city by inputting the address of a given plot of land about which information is sought. I input into ACRIS an address that, I had been advised, might belong to Musa, but the information that ACRIS returned regarding that address did not refer to Musa or to any individual with a similar name. Therefore, it appeared that that address did not belong to Musa, thus that I would not be able to serve copies of the Summons and Complaint upon him there.

6. On or about November 7, 2007, I attempted to determine Musa's residential address by utilizing PeopleFinder.com, an Internet website through which, for a fee, one can obtain public records regarding an individual. The address that PeopleFinder.com provided that appeared most likely to be Musa's was 1657 8th Avenue, Brooklyn, NY 11215. On that same date, at approximately 5:45 p.m., I attempted to serve copies of the Summons and Complaint on Musa at 1657 8th Avenue in Brooklyn. When I arrived there, I discovered that it is a residential building with multiple apartments. I did not know which (if any) apartment belonged to Musa, and none of the names on the building directory resembled Musa's. Therefore, I was unable to locate Musa and/or to serve copies of the Summons and Complaint on him at that location.

7. On or about December 12, 2007, at approximately 11:30 a.m., I (a) affixed to the door of BNI's office, with masking tape, a sealed envelope addressed to Musa containing copies of the Summons and Complaint and the Order for Conference Pursuant to Rule 16(b) (Dkt. No. 2) (the "Rule 16(b) Order"), and (b) caused an envelope that did not indicate on the outside that it was from an attorney's office or concerned an action against Musa, and that contained copies of the Summons and Complaint and the Rule 16(b) Order, to be placed in First Class U.S. Postal Mail for delivery to Musa at BNI's office. On December 28, 2007, I caused a second envelope that did not indicate on the outside that it was from an attorney's office or that it concerned an action against Musa, that contained copies of the Summons and Complaint and the Rule 16(b) Order, and that was marked "Personal and Confidential," to be placed in First Class U.S. Postal Mail for delivery to Musa at BNI's office. I served the Summons and Complaint on Musa by

these means because, despite our diligent efforts to serve Musa personally and to determine his residential address, as described above, we had been unable to do so.

  
Jeremy Murphy

Dated: January 2, 2008  
City, State: New York, New York  
Notarized:

*Sworn to before me on  
this 2<sup>nd</sup> day of January 2008.*

*Michelle A. Peters*

MICHELLE A. PETERS  
Notary Public, State of New York  
No. 02PE6135091  
Qualified in New York County  
Commission Expires October 11, 2009

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Javier Cesario and Fernando Martinez,  
Plaintiff(s),  
-----X

-against-

BNI Construction, Inc. Mikial Abdur-Rahim and  
Musa Last Name Unknown,  
Defendant(s).  
-----X

STATE OF NEW YORK )  
S.S.:  
COUNTY OF NEW YORK)

Judge Stanton  
Index No. 07 CIV 8545

AFFIDAVIT OF  
ATTEMPTED SERVICE

TIMOTHY M. BOTTI, being duly sworn, deposes and says that he is over the age of eighteen years, is employed by the attorney service, DLS, Inc., and is not a party to this action.

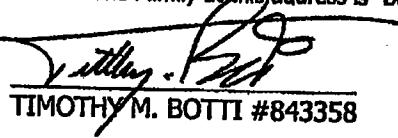
That on the 8<sup>th</sup> day of October 2007, at approximately 2:55 pm, deponent attempted to serve a true copy of the **SUMMONS IN A CIVIL ACTION, COMPLAINT AND JURY DEMAND** upon BNI Construction, Inc., Mikial Abdur-Rahim and Musa (Last name unknown) at 13 Mevan Avenue, Englewood, NJ 07631. No answer was received when deponent rang the bell and knocked on the door.

That on the 9<sup>th</sup> day of October 2007, at approximately 7:50 pm, deponent again attempted to serve a true copy of the **SUMMONS IN A CIVIL ACTION, COMPLAINT AND JURY DEMAND** upon BNI Construction, Inc., Mikial Abdur-Rahim and Musa (Last name unknown) at 13 Mevan Avenue, Englewood, NJ 07631, again no answer was received when deponent rang the bell and knocked on the door.

That on the 10<sup>th</sup> day of October 2007, at approximately 6:40 pm, deponent again attempted to serve a true copy of the **SUMMONS IN A CIVIL ACTION, COMPLAINT AND JURY DEMAND** upon BNI Construction, Inc., Mikial Abdur-Rahim and Musa (Last name unknown) at 13 Mevan Avenue, Englewood, NJ 07631, again no answer was received when deponent rang the bell and knocked on the door.

That on the 11<sup>th</sup> day of October 2007, at approximately 8:20 pm, deponent again attempted to serve a true copy of the **SUMMONS IN A CIVIL ACTION, COMPLAINT AND JURY DEMAND** upon BNI Construction, Inc., Mikial Abdur-Rahim and Musa (Last name unknown) at 13 Mevan

Avenue, Englewood, NJ 07631. Deponent spoke to a woman who said "I have never heard of these names" The Family at this address is "Bolds."

  
TIMOTHY M. BOTTI #843358

Sworn to before me this  
15<sup>th</sup> day of October, 2007

NOTARY PUBLIC

HOWARD DANIEL GOLDMAN  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01GO5062405  
QUALIFIED IN NEW YORK COUNTY  
MY COMMISSION EXPIRES JULY 1, 2010

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Javier Cesario and Fernando Martinez,  
Plaintiff(s),

-against-

BNI Construction, Inc. Mikial Abdur-Rahim and  
Musa Last Name Unknown,  
Defendant(s).

Judge Stanton  
Index No. 07 CIV 8545

AFFIDAVIT OF  
ATTEMPTED SERVICE

STATE OF NEW YORK )  
S.S.:  
COUNTY OF NEW YORK)

DARRYL A. GREEN, being duly sworn, deposes and says that he is over the age of eighteen years, is employed by the attorney service, DLS, Inc., and is not a party to this action.

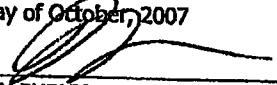
That on the 4<sup>th</sup> day of October 2007, at approximately 3:55 pm, deponent attempted to serve a true copy of the **SUMMONS IN A CIVIL ACTION, COMPLAINT AND JURY DEMAND** upon BNI Construction, Inc., Mikial Abdur-Rahim and Musa (Last name unknown) at 300 West 147<sup>th</sup> Street, Suite 1C, New York, NY 10039. No answer was received when deponent rang the bell apartment 1C.

That on the 5<sup>th</sup> day of October 2007, at approximately 10:30 am, deponent again attempted to serve a true copy of the **SUMMONS IN A CIVIL ACTION, COMPLAINT AND JURY DEMAND** upon BNI Construction, Inc., Mikial Abdur-Rahim and Musa (Last name unknown) at 300 West 147<sup>th</sup> Street, Suite 1C, New York, NY 10039, again no answer was received when deponent rang the bell apartment 1C.

That on the 6<sup>th</sup> day of October 2007, at approximately 12:48 pm, deponent again attempted to serve a true copy of the **SUMMONS IN A CIVIL ACTION, COMPLAINT AND JURY DEMAND** upon BNI Construction, Inc., Mikial Abdur-Rahim and Musa (Last name unknown) at 300 West 147<sup>th</sup> Street, Suite 1C, New York, NY 10039, again no answer was received when deponent rang the bell apartment 1C.

  
DARRYL A. GREEN #0866535

Sworn to before me this  
15<sup>th</sup> day of October, 2007

  
NOTARY PUBLIC

HOWARD DANIEL GOLDMAN  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01GO5082405  
QUALIFIED IN NEW YORK COUNTY  
MY COMMISSION EXPIRES JULY 1, 2010

# **EXHIBIT C**

Case 1:07-cv-08545-LLS Document 5 Filed 11/02/2007 Page 1 of 4

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

Southern  
Javier Cesario and  
Fernando Martinez

District of

New York

v.

SUMMONS IN A CIVIL ACTION

BNI Construction, Inc.,  
Mikial Abdur-Rahim and  
Musa Last Name Unknown.

CASE NUMBER:

07 CIV 8545

JUDGE STANTON

TO: (Name and address of Defendant)

BNI Construction, Inc.,  
300 West 147th St., Suite 1C  
New York, New York 10039

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Kerin E. Coughlin, Esq.  
Constantine Cannon LLP  
450 Lexington Avenue, 17th Fl.  
New York, New York 10017

Elena Goldstein, Esq.  
New York Legal Assistance Group  
450 West 33rd Street, 11th Fl.  
New York, New York 10001

an answer to the complaint which is served on you with this summons, within twenty (20) days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

CLERK

(By) DEPUTY CLERK

*Marcos Quintero*

DATE

10/2/2007

Case 1:07-cv-08545-LLS Document 5 Filed 11/02/2007 Page 2 of 4

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JAVIER CESARIO and  
FERNANDO MARTINEZ,

Plaintiffs,

v.

BNI CONSTRUCTION, INC.,  
MIKIAL ABDUR-RAHIM and  
MUSA LAST NAME UNKNOWN,

Defendants.

) Case No. 07 Civ. 8545 (LLS)

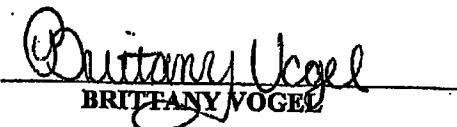
) ECF Case

) CERTIFICATE OF  
SERVICE

I, BRITTANY VOGEL, am over the age of eighteen years and not a party to the above-referenced matter. I am an employee of Hinman Straub PC, 121 State Street, Albany, New York 12207.

On October 25, 2007, I caused the Summons and Complaint in the above-captioned matter to be served on defendant BNI Construction, Inc. ("BNI"), 300 West 147<sup>th</sup> Street, Suite 1C, New York, New York 10039, by delivering to and leaving with a person authorized by the secretary of state to receive such service, at the office of the Department of State in the city of Albany, duplicate copies of said Summons and Complaint together with the statutory fee, pursuant to New York General Business Law Section 306(b)(1).

Dated: October 26, 2007  
New York, New York

  
BRITTANY VOGEL

Case 1:07-cv-08545-LLS Document 5 Filed 11/02/2007 Page 3 of 4

State of New York - Department of State  
Receipt for Service

Receipt #: 200710260020  
Date of Service: 10/25/2007

Cash #: 200710260020  
Fee Paid: \$40 - CHECK

Service was directed to be made pursuant to: SECTION 306 OF THE BUSINESS  
CORPORATION LAW

Party Served: BNI CONSTRUCTION, INC.

Plaintiff/Petitioner:  
CESARIO, JAVIER

Service of Process Address:  
BNI CONSTRUCTION, INC.  
300 W 147TH ST  
STE 1C  
NEW YORK, NY 10039

Secretary of State  
By CAROL VOGT

Case 1:07-cv-08545-LLS Document 5 Filed 11/02/2007 Page 4 of 4

AO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE	
NAME OF SERVER (PRINT)	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<input type="checkbox"/> Served personally upon the defendant. Place where served:  <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: <input type="checkbox"/> Returned unexecuted:  <input type="checkbox"/> Other (specify):		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL \$0.00
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.		
Executed on _____	Date _____	Signature of Server _____
<i>Address of Server</i> _____		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.